

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 422 be amended to read as follows:

- 1 Page 31, between lines 36 and 37, begin a new paragraph and insert:
- 2 "SECTION 49. IC 35-50-2-2, AS AMENDED BY P.L.224-2003,
- 3 SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a
- 5 sentence for a felony, except as provided in this section or in section
- 6 2.1 of this chapter.
- 7 (b) With respect to the following crimes listed in this subsection, the
- 8 court may suspend only that part of the sentence that is in excess of the
- 9 minimum sentence, unless the court has approved placement of the
- 10 offender in a forensic diversion program under IC 11-12-3.5:
- 11 (1) The crime committed was a Class A or Class B felony and the
- 12 person has a prior unrelated felony conviction.
- 13 (2) The crime committed was a Class C felony and less than
- 14 seven (7) years have elapsed between the date the person was
- 15 discharged from probation, imprisonment, or parole, whichever is
- 16 later, for a prior unrelated felony conviction and the date the
- 17 person committed the Class C felony for which the person is
- 18 being sentenced.
- 19 (3) The crime committed was a Class D felony and less than three
- 20 (3) years have elapsed between the date the person was
- 21 discharged from probation, imprisonment, or parole, whichever is
- 22 later, for a prior unrelated felony conviction and the date the
- 23 person committed the Class D felony for which the person is
- 24 being sentenced. However, the court may suspend the minimum
- 25 sentence for the crime only if the court orders home detention
- 26 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
- 27 sentence specified for the crime under this chapter.
- 28 (4) The felony committed was:
- 29 (A) murder (IC 35-42-1-1);
- 30 (B) battery (IC 35-42-2-1) with a deadly weapon or battery

- 1 causing death;
- 2 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 3 (D) kidnapping (IC 35-42-3-2);
- 4 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 5 (F) rape (IC 35-42-4-1) as a Class A felony;
- 6 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 7 felony;
- 8 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 9 felony;
- 10 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 11 with a deadly weapon;
- 12 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 13 injury;
- 14 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 15 or with a deadly weapon;
- 16 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 17 weapon;
- 18 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 19 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 20 (O) dealing in cocaine, a narcotic drug, or methamphetamine
- 21 (IC 35-48-4-1) if the court finds the person possessed a
- 22 firearm (as defined in IC 35-47-1-5) at the time of the offense,
- 23 or the person delivered or intended to deliver to a person under
- 24 eighteen (18) years of age at least three (3) years junior to the
- 25 person and was on a school bus or within one thousand
- 26 (1,000) feet of:
 - 27 (i) school property;
 - 28 (ii) a public park;
 - 29 (iii) a family housing complex; or
 - 30 (iv) a youth program center;
- 31 (P) dealing in a schedule I, II, or III controlled substance (IC
- 32 35-48-4-2) if the court finds the person possessed a firearm
- 33 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 34 person delivered or intended to deliver to a person under
- 35 eighteen (18) years of age at least three (3) years junior to the
- 36 person and was on a school bus or within one thousand
- 37 (1,000) feet of:
 - 38 (i) school property;
 - 39 (ii) a public park;
 - 40 (iii) a family housing complex; or
 - 41 (iv) a youth program center;
- 42 (Q) an offense under IC 9-30-5 (operating a vehicle while
- 43 intoxicated) and the person who committed the offense has
- 44 accumulated at least two (2) prior unrelated convictions under
- 45 IC 9-30-5; **or**
- 46 (R) aggravated battery (IC 35-42-2-1.5); **or**

(S) the offense is absentee ballot fraud under IC 3-14-2-2.5.

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 50. IC 35-50-2-7, AS AMENDED BY P.L.98-2003, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of one and one-half (1 1/2) years, with not more than one and one-half (1 1/2) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances. In addition, ~~he~~ **the person** may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; ~~or~~

(3) the offense is possession of child pornography (IC 35-42-4-4(c)); ~~or~~

(4) the offense is absentee ballot fraud under IC 3-14-2-2.5.

The court shall enter in the record, in detail, the reason for its action

- 1 whenever it exercises the power to enter judgment of conviction of a
- 2 Class A misdemeanor granted in this subsection."
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 422 as printed January 27, 2004.)

Senator LAWSON C